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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

COMMENTS OF HORIZON CELLULAR TELEPHONE COMPANY

Horizon Cellular Telephone Company ("Horizon") is the general partner of several partnerships that are the licensees of A-block cellular telephone systems in rural service areas and metropolitan statistical areas. In this proceeding, the Commission has tentatively concluded, in response to a petition for rule making filed by MCI,[1/] that "equal access" obligations should be extended to all providers of cellular telephone service.

Two years ago, in response to the MCI Petition, Horizon filed Comments vigorously opposing the imposition of "equal access" requirements on cellular carriers not affiliated with any of the Bell Operating Companies (the "BOCs"). A copy of those Comments is attached for the convenience of the Commission. The reasons Horizon articulated then remain as forceful today. Independent cellular companies do not control the bottleneck that led to the imposition of the equal access requirements on the BOCs. Instead, these cellular carriers face vigorous competition from all sectors of the interexchange telecommunications marketplace. To impose an equal access requirement on them would not remedy any competitive imbalance but would impose substantial costs on these carriers, impair competition in the interexchange resale market, and ultimately disadvantage, rather than benefit, consumers.

1/ MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making (June 2, 1992) ("MCI Petition").

The Commission should therefore reject its tentative conclusion.

HORIZON CELLULAR TELEPHONE COMPANY

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Federal Communications Commission
Office of the Secretary

In the Matter of Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licensees	)	RM-8012

REPLY COMMENTS OF HORIZON CELLULAR TELEPHONE COMPANY

INTRODUCTION

Horizon Cellular Telephone Company ("Horizon") is the general partner of three operating partnerships that are the licensees of A-block cellular telephone systems in rural service areas ("RSAs"). It has filed for Commission consent to acquire other cellular RSA systems, and it also holds minority interests in a number of metropolitan statistical areas and RSAs.

MCI has filed a petition for rulemaking, asking the Commission to impose an "equal access" obligation on all cellular carriers similar to that imposed on local exchange carriers. MCI would have the Commission require cellular carriers to permit each customer to select the long-distance carrier of his or her choice to complete long-distance calls initiated on a cellular telephone. Such a requirement, in Horizon's view, ignores both the origin of the equal access requirement and the nature of the cellular telephone industry. If imposed, it would lead to higher costs for consumers with no countervailing benefits to competition.

DISCUSSION

The equal access requirement had its genesis in the concern that the Bell Operating Companies ("BOCs"), as local exchange companies with a bottleneck over landline local exchange service, would be able to use their monopoly power over the provision of such service to suppress competition in the market for interexchange telecommunications services. A bottleneck is the only basis on which to conclude that the normal functioning of the marketplace will not provide the most competitive and efficient form of interexchange communications.

Cellular carriers, however, have no such bottleneck or monopoly power. At the most immediate level, there are two cellular carriers per market. Because customers can so readily change from one carrier to the other, the two carriers are vigorously competitive, on price, coverage, and service. Other forms of direct competition exist or loom close on the horizon: Specialized Mobile Radio (including in particular the "Enhanced SMR" that is indistinguishable to the consumer from cellular), mobile satellite, and personal communications services. Cellular faces additional competition from other services, such as paging, portable telephone, and the increasing ubiquity of pay telephones, all of which offer consumer choice with varying degrees of mobility, quality, and immediacy, that provide market pressure on the cellular providers. Thus, the fundamental underpinning of an equal access requirement is lacking in the cellular marketplace. There is simply no bottleneck for a non-landline-affiliated cellular carrier to exploit to frustrate competition in the interexchange market.[1/]

1/ Indeed, even the BOCs, the only cellular carriers to support the imposition of equal access on the cellular industry, do not do so out of any belief that cellular possesses a bottleneck, but rather out of a beggar-thy-neighbor belief that if they are saddled

Because cellular carriers are so competitive with each other, they do two things to lower the cost of providing long-distance service to their customers: First, they negotiate with all available interexchange carriers to obtain the best rates for long-distance service. Second, they construct their own facilities to provide what would be considered "long-distance" service under traditional equal access notions. Thus, even the notions of "local" and "long distance" have little meaning in the context of cellular. With the facilities cellular carriers have built, they provide to their customers wide areas of toll-free service, embracing areas for which the landline carrier imposes a toll charge. For example, Horizon's system in Pennsylvania 10 (Bedford) provides toll-free service over many exchanges that are toll calls on the landline system, and its Pennsylvania 6 (Lawrence) system, in cooperation with the neighboring A-block system, provides toll-free service over virtually all of the 412 area code, a far wider area than is provided toll-free by the landline telephone company. To require equal access would turn some toll-free areas into toll areas.

The interexchange carriers, who generally support MCI's petition, may not be fond of either volume discounts or facilities constructed to provide carriage over wide areas without toll. After all, interexchange carriers might be expected to prefer less facilities-based competition and fewer volume discounts. The public, however, benefits from the vigorous competition and efficiency that results from the existing system of competition.

While there would be no appreciable benefits to the consumer from an equal access obligation, there would be substantial costs to the cellular operators. Cellular systems

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with this requirement, all cellular carriers should be likewise burdened. See, e.g., Comments of Ameritech, et al. If the BOCs have a legitimate complaint that the equal access requirement in their case is counterproductive, their remedy is to be had by seeking relief from the MFJ court, not by rendering the entire industry more inefficient.

have been designed and configured with maximum efficiency in mind, without regard to artificial notions of having to provide "long-distance" transport solely over interexchange carrier facilities. An equal access obligation would require rerouting of at least some calls to hand-off the service to an interexchange carrier, even though the pathway would be less efficient to the customer. Additional facilities, hardware and software, and trunks would be required to comply with the requirement. Further costs would arise from the legal and managerial aspects of balloting, changes in presubscription, and compliance with the equal access regulatory scheme the Commission would have to create.

These costs are substantial, and will divert capital from productive expansion and upgrade plans. These effects are particularly acute in the case of small systems, especially in the RSAs, where there is a smaller customer base over which to spread the costs. Horizon estimates that with the cost of acquiring additional T-1s to connect each system with the interexchange carriers, the need to provide additional software enhancements, and the administrative costs mentioned above, the cost to the customer based on Horizon's current customer base could be as much as $50 per year, costs that do not lead to any benefits to the consumer.

In order to justify costs of this magnitude, the public interest benefits should be substantial. In this case, however, there are none. The conditions that gave rise to the equal access obligation do not exist in cellular. To impose that obligation here would diminish, not enhance, consumer welfare. Horizon therefore urges that the petition be denied.

Respectfully submitted,

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